



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 300
DENVER, COLORADO 80202-2466

May 6, 2003

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ronald Abernathy, Owner
Atlantic City Mercantile
100 E. Main
Atlantic City, WY 82520

RE: Emergency Administrative
Order issued under Section
1431 SDWA to Atlantic City
Mercantile
Docket No. **SDWA-08-2003-0012**
PWS ID #5600432N

Dear Mr. Abernathy:

Enclosed is an Emergency Administrative Order issued under Section 1431 of the Safe Drinking Water Act (SDWA), 40 U.S.C. §300i to you as owner of the Atlantic City Mercantile. The Order is based on the bacteriological sample analyzed May 3, 2003 as fecal coliform positive and the historical contamination problems associated with this water system may pose an imminent and substantial endangerment to the health of persons served by this water system.

The enclosed Order sets forth the actions you must immediately take. Penalties for failing to comply are set forth in the Order. Among other things, the Order requires the immediate issuance of a boil water notice and temporary increased bacteriological monitoring.

EPA is committed to working with Atlantic City to ensure the safety of the System's water supply and appreciates your cooperation in this matter. If you have any questions regarding this Order, the most knowledgeable individuals on my staff regarding these requirements are Kathelene Brainich who can be reached at (303) 312-6481 or Lisa Kahn at (303) 312-6896. If you are represented by an attorney or have legal questions, please call Michelle Marcu, Enforcement Attorney, at (303) 312-6921.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Diane Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Emergency Administrative Order
Sample Public Notice Template
Small Business Information Sheet

cc: Dr. Karl Musgrave, WDOH
Larry Robinson, WDEQ
Laurie Leis, WDOA





3
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

May 6, 2003

Ref: 8ENF-L

Scott Luther, Chair
Fremont County Commissioners
450 N. 2nd, Room 220
Lander, Wyoming 82520

Re: Notice of Emergency
Administrative
Order issued under Section 1431
SDWA against Atlantic City
Mercantile
Docket No. **SDWA-08-2003-0012**
PWS ID#5600432N

Dear Mr. Luther:

Pursuant to Section 1414(a)(2)(B) of the 1996 amendments to the Safe Drinking Water Act (SDWA), the Environmental Protection Agency is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

An Emergency Administrative Order is being issued under Section 1431 of the SDWA to the owner of the Atlantic City Mercantile located in Atlantic City, Wyoming. The Order requires that the public water system take immediate measures to return to compliance with the SDWA and the National Primary Drinking Water Regulations.

EPA has determined, based on a fecal coliform bacteria positive water quality monitoring results analyzed May 3, 2003 and historical contamination problems, that the water currently being served may present an imminent and substantial endangerment to the health of persons.

A copy of the Emergency Order is enclosed for your information. The Order does not require any response or action by the County Commission. If you have any questions regarding this Order, please



Printed on Recycled Paper



Printed on Recycled Paper

contact Kathelene Brainich at (800) 227-8917 extension 6481.

Sincerely,

SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure



Printed on Recycled Paper

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	
)	
Ronald Abernathy, Owner)	
Atlantic City Mercantile)	
100 East Main)	
Atlantic City, Wyoming 82520)	
PWS ID # 5600432)	
)	
Respondent)	EMERGENCY
)	ADMINISTRATIVE ORDER
Proceedings under section 1431)	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300i)	Docket No. SDWA-08-2003-0012
)	

I. STATUTORY AUTHORITY

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1431 of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300i, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region VIII.

II. JURISDICTION

- A. EPA has jurisdiction to issue emergency orders pursuant to section 1431 of the Act, 42 U.S.C. § 300i.
- B. EPA has primary enforcement responsibility for the Act because the State of Wyoming does not have primary



Printed on Recycled Paper

enforcement authority for public water systems.

III. FINDINGS

- A. Ronald Abernathy (Respondent) is an individual and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
- B. Respondent owns and/or operates the Atlantic City Mercantile Water System located in Atlantic City, Wyoming for the provision to the public of piped water for human consumption.
- C. Respondent's water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system " within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
- D. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g,



and its implementing regulations, 40 C.F.R. part 141.

- E. According to a March 21, 2002 sanitary survey conducted by an agent of EPA, Respondent operates a system that is supplied by a groundwater source under the direct influence of surface water that consists of one well. The system provides both multi-barrier filtration and dual disinfection. The system serves an average of 25 persons daily through 5 service connections and is operational all year.
- F. EPA has determined, based on a sample analyzed May 3, 2003 as positive for acute fecal coliform, that the water source currently available to the System may present an imminent and substantial endangerment to the health of persons.
- G. The State of Wyoming has not acted to protect public health because it is not authorized to do so under the Act.
- H. Local authorities have not acted to protect public health because they are not authorized to do so under the Safe Drinking Water Act.
- I. This Order and the requirements set forth herein are



necessary to ensure adequate protection of public health based on EPA's primary enforcement responsibility for the Act in Wyoming.

IV. ORDER

Based on the foregoing Findings, and pursuant to section 1431 of the Act, IT IS ORDERED:

A. INTENT TO COMPLY

1. Within 24 hours of receipt of this Order, Respondent shall notify EPA in writing of its intention to comply with the terms of this Order.
2. The written response shall include a general plan for compliance with each of the elements of this Order.

B. ALTERNATIVE WATER SUPPLY

1. Upon the effective date of this Order, Respondent shall notify all water users of the Atlantic City Mercantile Water System that an alternative water supply or water that has been boiled for at least one minute is available. The alternative water supply shall be from a licensed water distributor, licensed by the State of Wyoming Department of Agriculture, Consumer Health Services Program, and



shall be made available at no cost as needed for drinking and food preparation until Respondent receives notification from EPA that alternative water is no longer necessary.

2. Respondent shall provide a sufficient quantity of water for reasonable domestic uses, at a minimum, two liters daily, for each customer of the public water system.
3. Within 24 hours of receipt of this Order, Respondent shall submit certification to EPA of compliance with paragraph IV.B. above.

C. MONITORING REQUIREMENTS

1. Upon the effective date of this Order, Respondent shall conduct bacteriological monitoring as follows:
 - a. Collect daily samples to determine compliance with the maximum contaminant level ("MCL") for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondent shall report analytical results, via phone or fax, to EPA immediately upon receiving the results.



Respondent shall continue daily monitoring until receiving written notice from EPA.

- b. After Respondent receives written notice from EPA, Respondent shall initiate weekly bacteriological sampling to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
- c. EPA will notify Respondent in writing that weekly bacteriological sampling is no longer required.
- d. Thereafter, Respondent shall comply with all bacteriological monitoring requirements for non-community water systems with a groundwater under the direct influence of surface water source found at 40 C.F.R. § 141.21 to determine compliance with the MCLs as stated



in 40 C.F.R. § 141.63.

- e. Respondent shall report all bacteriological analytical results to EPA within 10 days of the end of each monitoring period, as required by 40 C.F.R. § 141.31(a), or sooner if specified in this Order (i.e. positive results).

2. Respondent shall monitor for chlorine residual as follows:

- a. Respondent shall monitor chlorine residual at the entrance to the distribution system and at the furthest tap, and shall record results daily. Respondent shall continue this measure until receiving written notice from EPA to discontinue.
- b. Respondent shall report the results of the chlorine residual monitoring to EPA monthly, within the first



ten (10) days of the month following the compliance period. Respondent shall call EPA within 24 hours any time the chlorine residual is below .2 mg/l or the turbidity monitoring is greater than 1 NTU.

D. PUBLIC NOTICE

Upon receipt of this Order, Respondent shall provide public notice of the fecal coliform positive sample. This public notice shall be given in one or more of the following forms of delivery: (1) Appropriate broadcast media (such as radio and television); (2) Posting of the notice in conspicuous locations throughout the area served by the water system, including, but not limited to, at a minimum, posting in the entry way to the facility, and over every faucet at the water system; (3) Hand delivery of the notice to persons served by the water system; or (4) Another delivery method approved in writing by EPA. The notice shall be repeated at least once every 3 months by mail, hand delivery or posting as long as the violation exists. Respondent shall comply



with any additional public notification requirements that may be established by EPA. Upon the effective date of this Order, Respondent shall comply with the publication notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d). The public notice shall include the following information:

- a. All requirements as specified in 40 C.F.R. § 141.205 including:
 - i. A description of the violation or situation, including contaminant of concern, and the contaminant level;
 - ii. When the violation or situation occurred;
 - iii. Any potential adverse health effects from the violation or situation (see section b. below);
 - iv. The population at risk,



including subpopulations
particularly vulnerable if
exposed to the contaminant in
their drinking water;

- v. Whether alternative water
supplies should be used (see
section b. below);
- vi. What actions consumers should
take, including when they
should seek medical help, if
known (see section b. below);
- vii. What the system is doing to
correct the violation or
situation;
- viii. When the water system expects
to return to compliance or
resolve the situation;
- ix. The name, business address,
and phone number of the water
system owner, operator, or
designee of the public water



system as a source of
additional information
concerning the notice; and

- b. Respondent shall include the
following mandatory health effects
language in the public notice as
specified in

40 C.F.R. § 141.205(d)(1), Appendix
B to subpart Q of part 141:

Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems. People who consumed the water at the Atlantic City Mercantile have exhibited symptoms associated with ingestion of Fecal coliform and E. Coli, including, but not limited to, diarrhea, nausea, and vomiting.

Fecal coliforms and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for



infants, young children, and people with severely compromised immune systems.

UNTIL FURTHER NOTIFIED, ALL WATER USED FOR DRINKING, BRUSHING TEETH, COOKING, MAKING ICE, WASHING DISHES, OR USED FOR HUMAN CONSUMPTION, ETC., SHALL BE BOILED FOR AT LEAST ONE (1) MINUTE, AT A ROLLING BOIL, BEFORE USE. ALL STORED WATER, DRINK OR ICE MADE RECENTLY FROM THIS SUPPLY SHALL BE DISCARDED.

E. CORRECTIVE ACTION MEASURES

1. If any of Respondent's total coliform bacteria repeat monitoring results are fecal coliform positive or E. coli positive, Respondent shall submit a plan to EPA within fifteen (15) days of the effective date of this Order for providing a permanent supply of water which meets the bacteriological MCL as set forth in 40 C.F.R. § 141.63. The plan shall include the following items:
 - a. evaluation of the cause of the fecal coliform positive or E. coli contamination;
 - b. all modifications necessary to bring Respondent's water system



into compliance with the
bacteriological MCL as set forth in
with 40 C.F.R. § 141.63;

c. a schedule for implementing all
modifications, including specific
milestone dates and a final
compliance date (no later than two
months from the effective date of
this Order).

2. The schedule for implementing modifications as set forth in the paragraph above shall be incorporated into this Order upon written approval by EPA.
3. Respondent shall submit monthly reports to EPA on progress on all corrective measures identified in the paragraphs above. Each report shall include a description of any activity conducted on the public water supply. Reports shall be postmarked no later than the 1st of each month, with the first report postmarked no later than July 1, 2003.

F. REPORTING REQUIREMENTS

1. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(g)(1) by



reporting any total coliform MCL violation under 40 C.F.R. § 141.63 to EPA no later than the end of the next business day after it learns of the violation.

2. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.21(e) by reporting any fecal coliform or E. coli positive

sample to EPA by the end of the day when the system is notified of the test result.

3. Unless otherwise specified, all reports and notifications herein required shall be submitted to:

Kathelene Brainich
US Environmental Protection Agency
Technical Enforcement Program (8ENF-T)
999 18th Street Suite 300
Denver, Colorado 80202-2466
Telephone (800)227-8917 X 6481 or (303) 312-6481

V. GENERAL PROVISIONS

- A. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action



Printed on Recycled Paper

otherwise authorized under the Act.

- B. Violation of any term of this Order instituted under section 1431(a) of the Act, 42 U.S.C. § 300i(a), may subject the Respondent to a civil penalty of not to exceed \$15,000 for each day in which such violation occurs or failure to comply continues, assessed by an appropriate U.S. District Court under section 1431(b) of the Act, 42 U.S.C. § 300i(b).

- C. Violation of any requirement of the SDWA or its implementing regulations instituted under section 1414(b), 42 U.S.C. § 300g-3(b), may subject Respondent to a civil penalty of not more than \$27,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

- D. The effective date of this Order shall be the date of issuance.

Issued this 6TH day of May, 2003.



SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Michael T. Risner

Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON MAY 6, 2003.



Printed on Recycled Paper

bcc: Tina Artemis, 8RC
Brenda Cazier, 8ENF-PT
Michelle Marcu, 8ENF-L

